IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

WP(C).No. 4152 of 2007(T)

PETITIONER:

M/S.ELGITREAD (INDIA) LTD.,
KOTTAYI, KARIANKODE P.O., PALAKKAD,
REP.BY ITS HEAD OPERATIONS, MR.P.VENUGOPALAN NAIR.

BY ADV. SRI.A.M.SHAFFIQUE

RESPONDENTS:
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1. **ASSISTANT COMMISSIONER OF COMMERCIAL TAXES (ASSMT), SPECIAL CIRCLE, PALAKKAD.**

2. **ASSISTANT COMMISSIONER, (AUDIT ASSESSMENT), COMMERCIAL TAXES, PALAKKAD.**

3. **STATE OF KERALA, REPRESENTED BY ITS SECRETARY (TAXATION), SECRETARIAT, THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SRI. MOHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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W.P(C) NO.4152 OF 2008

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Dated this the 27th day of March, 2008

J U D G M E N T

Petitioner claims title and possession over an extent of 111.5 cents of land comprised in Sy.Nos.84/4 and 86/4 of Mulavukadu Village. A portion of the said property was acquired for a public purpose. The grievance of the petitioner is that though she is the real owner of the property, she is not served with any notice and compensation is also not disbursed to her. Learned Government Pleader, on instructions, submitted that the original Thandapper account holder was one Kunjahammed Hassan and there was also material to show that one Sarasammal was also having interest over the property. Petitioner did not make any claim during the pendency of the land acquisition proceedings and hence the District Collector passed the award in favour of the aforesaid Kunjahammed Hassan and Sarasammal and referred the matter to the reference court under Section 31 of the Land Acquisition Act for considering as to who is entitled to get the compensation awarded. It is submitted by the counsel for th

petitioner that the petitioner has filed a petition under Section 18(1) of the Act claiming enhancement, but since she was not a party to the award, that application was not referred for consideration.

2. Counsel for the petitioner submitted that the District Collector referred LAC No.241 of 2006 under Section 31 of the Act and on receipt of the case records, the learned Sub Judge numbered the reference as LAR. No.193 of 2007. It is further submitted that notice issued to one of the claimants returned with endorsement that he was no more and the notice issued to the other claimant was returned with endorsement 'whereabouts not known'. It is submitted that petitioner filed I.A. No.602 of 2008 for getting herself impleaded as an additional claimant. But, in the meanwhile, the learned Sub Judge returned the entire case records of the reference to the Land Acquisition Officer to furnish the name and address of the legal heirs of the deceased claimant as well as the correct address of the other claimant.

3. In **Joseph v. The Special Tahsildar (LA)** (2008 (1) KLT 274) a learned Single Judge of this Court had

considered the procedure to be followed in case of death of claimant in land acquisition cases. But, in this case, the learned Sub Judge had already returned the case records.

4. Learned counsel for the petitioner submits that Kunjahammed Hassan and Sarasammal, who were shown as the claimants, have no interest over the property and they were made parties only as per the old revenue records and Thandapper account. It is pointed out that subsequently the Thandapper account was also changed and petitioner's name was entered and she is the absolute owner and she is paying tax as can be seen from Exhibits P2 and P3. It is submitted that Kunjahammed Hassan died long back and it may not be possible to trace out the details of his legal heirs and Sarasammal left the place years back and it is not possible to trace out her whereabouts.

5. Considering all aspects of the matter, I am of the view that three months' time can be granted to the Land Acquisition Officer to find out the details of the legal heirs of Kunjahammed and whereabouts of Sarasammal. If it is possible to get the addresses, the Land Acquisition Officer

shall return the file to the Sub Court with such details. In case he is unable to trace out the details, then also he may return the records to the Sub Court along with a petition stating the difficulties in tracing out the details. It is open to the petitioner to file a petition before the Sub Court to dispense with notice to claimants 1 and 2 and produce materials to prove her absolute title. Learned Sub Judge shall consider and pass appropriate orders in I.A. No.602 of 2008 in LAR No.193 of 2007 in accordance with law expeditiously. There will be a further direction to the Land Acquisition Officer to refer the application filed by the petitioner under Section 18 (1) of the Act for enhancement of compensation to the court in accordance with law.

Writ Petition is disposed of in the above terms.

K. PADMANABHAN NAIR, JUDGE.

vsv